

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Corrections and  
Rehabilitation**

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections:** 3087, 3087.1, 3087.2,  
3087.3, 3087.4, 3087.5,  
3087.6, 3087.7, 3087.8,  
3087.9, 3087.10, 3087.11,  
3087.12

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2018-0503-02**

**OAL Matter Type: Certificate of Compliance  
(C)**

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This timely certificate of compliance action makes permanent the prior emergency actions, submitted as operationally necessary under Penal Code section 5058.3, which established a statewide Health Care Grievance Program and adopted two forms incorporated by reference. (See OAL File Nos. 2017-0626-02EON, 2018-0118-05EON.)

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

**Date:** June 13, 2018



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**Nicole C. Carrillo  
Attorney**

**For: Debra M. Cornez  
Director**

**Original: Scott Kernan, Secretary  
Copy: Julie Inderkum**

## NOTICE PUBLICATION/REGULATION SUBMISSION

CERT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2017-0822-14	REGULATORY ACTION NUMBER 2018-0503-02C	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED

In the office of the Secretary of State  
of the State of CaliforniaJUN 13 2018  
1:57 PM2018 MAY -3 P 5:04  
OFFICE OF  
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2017, 35-2	PUBLICATION DATE 9/1/2017

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Health Care Grievances	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2017-0629-02EON, 2018-0118-05EON
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3087, 3087.1, 3087.2, 3087.3, 3087.4, 3087.5, 3087.6, 3087.7, 3087.8, 3087.9, 3087.10, 3087.11, 3087.12
	AMEND
	REPEAL
TITLE(S) 15	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

February 9, 2018 - February 24, 2018

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Julie Inderkum	TELEPHONE NUMBER (916) 691-0697	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Julie.Inderkum@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

4-12-18

TYPED NAME AND TITLE OF SIGNATORY

SCOTT KERNAN, Secretary, California Department of Corrections and Rehabilitation

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 13 2018

Office of Administrative Law

## **FINAL TEXT OF REGULATIONS**

**In the following, ~~striketrough~~ indicates deleted text; underline indicates added or amended text.**

### **California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole**

#### **Chapter 1. Rules and Regulations of Adult Operations and Programs**

##### **Article 8.6. Health Care Grievances**

**New Section 3087 is adopted to read:**

###### **3087. Definitions.**

For the purpose of Article 8.6 only, the following definitions apply:

- (a) Accepted means that the health care grievance qualified for processing at the level submitted.
- (b) Administrative remedy means the non-judicial process provided to address patient health care grievances in which a grievant may allege an issue and seek a remedy and the Health Care Grievance Office and Health Care Correspondence and Appeals Branch have an opportunity to intervene and respond. A headquarters' level health care grievance appeal disposition exhausts administrative remedies.
- (c) Amendment means a headquarters' instruction to the institution to revise a previously written institutional level health care grievance response which requires correction or clarification prior to conducting a headquarters' level grievance appeal review.
- (d) Appeal means a grievant's submission of a health care grievance to the headquarters' level for review of the institutional level disposition.
- (e) Business day means Monday through Friday excluding State holidays.
- (f) Chief Executive Officer (health care) means the highest level health care executive assigned to a CDCR institution.
- (g) Disposition means the outcome of the health care grievance review at the level submitted.
- (h) Expedited health care grievance means a health care grievance determined by clinical staff to require expeditious handling.
- (i) Grievant means a patient who submits for review a CDCR 602 HC (Rev. 1206/17), Health Care Grievance, which is incorporated by reference.
- (j) Headquarters' level directive means a written mandate by the headquarters' level reviewing authority to the institutional level reviewing authority requiring the action as identified in the directive, after headquarters' review of a health care grievance appeal.
- (k) Health care discipline means medical, dental, or mental health.
- (l) Health Care Correspondence and Appeals Branch (HCCAB) means the office responsible for ~~coordinating~~ statewide oversight of the grievance program and the headquarters' level health care grievance appeal review.
- (m) Health care grievance means a written complaint submitted by a patient using a CDCR 602 HC, pursuant to subsection 3087.1(a).
- (n) Health Care Grievance Office (HCGO) means the office responsible for coordinating the institutional level health care grievance review.

(o) Health care grievance package means the CDCR 602 HC and the CDCR 602 HC A (Rev. 12/06/17), Health Care Grievance Attachment, which is incorporated by reference, and all supporting documents. A health care grievance is not a record of care and treatment rendered and shall not be filed in the central file or health record.

(p) Health care grievance process means all steps involving grievant preparation and health care staff receipt, review, disposition, and exhaustion of submitted health care grievances.

(q) Health care staff means any administrative and/or clinical staff involved in the health care grievance process under health care's reviewing authority.

(r) Intervention means available administrative action or redress deemed necessary by health care staff to address an identified health care grievance.

(s) Material adverse effect means harm or injury that is measurable or demonstrable (even if that measurement or demonstration is subjective for the patient) or the reasonable likelihood of such harm or injury due to a health care policy, decision, action, condition, or omission.

(t) Multiple health care grievances means health care grievances received from more than one grievant on an identical issue.

(u) Patient means an inmate who is seeking or receiving health care services.

(v) Rejected means that the submitted health care grievance or appeal of grievance disposition did not qualify for processing for the reasons stated in the rejection.

(w) Response means the written notification provided to the grievant relative to the disposition, rejection, or withdrawal of a health care grievance or health care grievance appeal.

(x) Reviewing authority means health care staff authorized to approve and sign health care grievance responses to ensure procedural due process. The reviewing authority does not conduct a clinical review.

(1) The reviewing authority shall not be an individual who participated in the event or decision being grieved.

(2) Health care grievances and staff complaints submitted at the institutional level are approved and signed by the Chief Executive Officer (health care) or designee. Circumstances may warrant the headquarters' level reviewing authority to assign a designee.

(3) Health care grievances and staff complaints submitted at a contracted, community correctional, or out-of-state facilities are approved and signed by an executive level designee. Circumstances may warrant the headquarters' level reviewing authority to assign a designee.

(4) Health care grievance appeals and staff complaints submitted at the headquarters' level are approved and signed by the Deputy Director, Policy and Risk Management Services, or designee.

(y) Staff misconduct means health care staff behavior or activity that violates a law, regulation, policy, or procedure, or is contrary to an ethical or professional standard.

(z) Supporting documents means any document the grievant may need to substantiate allegations made including, but not limited to, property inventory sheets, property receipts, trust account statements, and written requests for interviews, items, or health care services. Supporting documents do not include documents that only restate the issue(s) grieved, argue its merits, or introduce new issues not identified in the current health care grievance form(s), or documents accessible to health care staff, such as patient health records.

(1) If submitting a health care grievance related to a reasonable accommodation decision, supporting documents include the reasonable accommodation request package and response.

(2) If submitting a health care grievance appeal, supporting documents include the original institutional level health care grievance response.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC ND~~ (No. C-94-2307-CW), U.S. District Court, Northern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.

**New Section 3087.1 is adopted to read:**

**3087.1. Right to Grieve.**

(a) The health care grievance process provides an administrative remedy to patients under health care's jurisdiction for review of complaints of applied health care policies, decisions, actions, conditions, or omissions that have a material adverse effect on their health ~~and~~ or welfare.

(1) Health care grievances are subject to an institutional level review and may receive a headquarters' level grievance appeal review, if requested by the grievant.

(2) Health care grievances shall be processed pursuant to the provisions of Article 8.6, Health Care Grievances, unless exempt from its provisions pursuant to court order or superseded by law or other regulations.

(3) Patients shall not use the health care grievance process to request health care services without a previous attempt to seek health care assistance through approved processes.

(4) The grievant shall not submit a health care grievance for issues outside the health care jurisdiction.

(b) Health care staff shall ensure effective communication is achieved and documented when there is an exchange of health care information involving patients with a hearing, vision, and/or speech impairment; developmental disability and/or learning disability; Test of Adult Basic Education (TABE) reading score of 4.0 or less, which includes zero or no TABE score; and/or Limited English Proficiency, and in health care grievance communications with such patients.

(c) The grievant has the right to submit one health care grievance every 14 calendar days, unless it is accepted as an expedited grievance. The 14 calendar day period shall commence on the calendar day following the grievant's last accepted health care grievance.

(d) Health care grievance forms shall be available to all inmates.

(e) Staff shall not take reprisal against the grievant for filing a health care grievance.

(f) A grievant who abuses the health care grievance process may be subject to health care grievance restriction pursuant to section 3087.11.

(g) Health care grievances are subject to a headquarters' level disposition before administrative remedies are deemed exhausted pursuant to section 3087.5. A health care grievance or health care grievance appeal rejection or withdrawal does not exhaust administrative remedies.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC ND~~ (No. C-94-2307-CW), U.S. District Court, Northern District of California; Clark Remedial Plan, *Clark v. California* 123 F.3d 1267 (9th Cir. 1997); *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.

**New Section 3087.2 is adopted to read:**

**3087.2. Preparation and Submittal of a Health Care Grievance.**

(a) The grievant is limited to the use of one CDCR 602 HC to describe the specific complaint that relates to their health care which they believe has a material adverse effect on their health or welfare, and one CDCR 602 HC A, if additional space is needed.

(b) The grievant shall complete Section A of the CDCR 602 HC and submit to the HCGO where the grievant is housed within 30 calendar days of:

(1) The action or decision being grieved, or;

(2) Initial knowledge of the action or decision being grieved.

(c) An individual may help the grievant prepare the health care grievance unless the act of providing such assistance results in any of, but not limited to, the following:

(1) Acting contrary to the provisions pursuant to section 3163, Article 6, subchapter 2, and section 3270, Article 2, subchapter 4.

(2) Allowing an individual to exercise unlawful influence or assume control over another.

(3) Unlawful access to the grievant's protected health information or personally identifiable information.

(d) An individual may not submit a health care grievance on behalf of another person.

(e) The grievant is limited to one issue or set of issues related to a single health care discipline that can reasonably be addressed in a single health care grievance response.

(f) The grievant shall print legibly or type in a standard font on the lines provided on the health care grievance form(s). There shall be only one line of text on each line provided on the health care grievance form(s).

(g) The grievant shall document clearly and coherently all information known and available to him or her regarding the issue.

(1) The grievant shall include any involved staff member's last name, first initial, title or position, and the date(s) and description of their involvement.

(2) If the grievant does not have information to identify involved staff member(s), the grievant shall provide any other available information that may assist in processing the health care grievance.

(h) The grievant may request an interview by initialing the appropriate box on the CDCR 602 HC.

(i) The grievant shall sign and date an original CDCR 602 HC. If the original health care grievance is not available, the grievant may obtain a copy stamped "treat as original" from the HCGO for submission.

(j) The grievant shall include supporting documents necessary for the clarification and/or resolution of the issue(s) prior to submitting the health care grievance pursuant to subsection 3087(z).

(k) If unable to obtain some supporting documents, the grievant shall submit the health care grievance with all available documents and an explanation of why the remaining documents are not available.

(l) The grievant shall present their health care grievance in a single submission.

(m) The grievant shall submit the institutional level health care grievance for processing ~~the institutional level health care grievance~~ to the HCGO where the grievant is housed.

(n) The grievant may not use threatening, obscene, demeaning, or abusive language, except if the grievant alleges health care staff used such language.

(o) The grievant shall not deface the health care grievance package.

(p) The grievant shall not contaminate the health care grievance or attach physical, organic or inorganic objects, particles, other materials, or samples. Examples of contaminants or attachments include, but are not limited to, food, medication, clothing, razor blades, needles, human hair, tissue, and/or bodily fluids such as blood, saliva, or excrement. Health care grievances received that are suspected to contain hazardous or toxic material that may present a threat to the safety and security of staff, inmates, or the institution shall be referred to custody staff for potential disciplinary sanctions.

(q) The grievant shall not submit a health care grievance which includes information or accusations the grievant knows to be false or makes a deliberate attempt to distort the facts.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC ND (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.~~

**New Section 3087.3 is adopted to read:**

**3087.3. Institutional Level Health Care Grievance Review.**

(a) The institutional level is for initial clinical/administrative review of health care grievances.

(b) Health care staff at a level no less than a Registered Nurse, utilizing clinical expertise within the scope of his or her licensure, shall triage each health care grievance within one business day of receipt and:

(1) Determine if the health care grievance identifies a health care issue that may require clinical intervention.

(2) Determine if the health care grievance warrants expedited processing.

(3) Determine if the health care grievance is administrative or clinical.

(c) All submitted health care grievances shall be screened to identify whether the submitted health care grievance complies with the requirements under section 3087.2 and may be rejected pursuant to section 3087.9.

(d) Any health care grievance received outside the time limits pursuant to section 3087.2 may be accepted at the discretion of the HCGO if it is determined that the health care grievance should be subject to further review for reasons including, but not limited to:

(1) Good cause exists for untimely submission of the health care grievance.

(2) Issues stated in the health care grievance allege facts that warrant further inquiry.

(e) Health care grievances accepted as clinical in nature shall receive a clinical review by the appropriate health care discipline as determined during the triage.

(f) An interview with the grievant shall be conducted in any of the following circumstances:

(1) The grievant requested an interview by initialing the appropriate box on the CDCR 602 HC.

(2) Health care staff has determined an interview is necessary.

(3) The grievant has been identified as the first grievant to submit an accepted health care grievance that has been designated as a multiple health care grievance pursuant to section 3087.7.

(4) The health care grievance is deemed a health care staff complaint and in such case, health care staff shall conduct the interview pursuant to section 3087.6.

(g) If the grievant refuses the health care grievance interview, the HCGO shall complete the health care grievance without grievant input.

(h) Health care staff who participated in the event or decision being grieved may not interview the grievant.

(i) Time limits for processing a health care grievance commence on the day it is received by the HCGO and shall be completed and returned to the grievant within 45 business days, unless processed as an expedited health care grievance pursuant to subsection 3087.8(b).

(j) Health care grievance responses shall be approved and signed pursuant to subsection 3087(x).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC-ND (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.~~

**New Section 3087.4 is adopted to read:**

**3087.4. Preparation and Submittal of a Health Care Grievance Appeal.**

(a) If dissatisfied with the institutional level health care grievance disposition, the grievant may appeal the disposition by completing and signing Section B of the CDCR 602 HC and submitting the health care grievance package to HCCAB via the United States Postal Service within 30 calendar days plus five calendar days for mailing from the date noted on the CDCR 602 HC, in the "Date closed and mailed/delivered to grievant" section on page 1 of 2.

(1) The requirements of subsections 3087.2(c) through (g) and (j) through (q) apply to this section.

(2) The health care grievance package shall include the original institutional level grievance response.

(3) The grievant shall not include new issues that were not included in the original health care grievance.

(4) For appeals of health care grievances processed on an expedited basis at the institutional level, the grievant shall forward the health care grievance package to the HCGO where the grievant is housed if continued expedited processing is requested.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; Section 1013(a), California Code of Civil Procedure; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC-ND (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.~~



**New Section 3087.5 is adopted to read:**

**3087.5. Headquarters' Level Health Care Grievance Appeal Review.**

(a) The headquarters' level is for review of appeals of institutional level health care grievance dispositions.

(b) Health care staff at a level no less than a Registered Nurse, utilizing clinical expertise within the scope of his or her licensure, shall:

(1) Triage each health care grievance appeal ~~to determine if a clinical review is warranted within one business day of receipt and:~~

(A) Determine if the health care grievance appeal identifies a health care issue that may require clinical intervention.

(B2) Determine if the health care grievance appeal ~~received will be accepted for warrants~~ continued expedited processing as requested by the grievant pursuant to subsection 3087.4(a)(4).

(2) Determine if a clinical review is warranted.

(3) Review the grievant's health record and applicable clinical and/or custodial information, as necessary, to aid in drafting the headquarters' level response and coordinate with the appropriate health care discipline as necessary, when an accepted health care grievance appeal is determined to warrant a clinical review.

(c) All submitted health care grievance appeals shall be screened to identify whether the health care grievance appeal complies with the requirements under sections 3087.2 and 3087.4 and may be rejected pursuant to section 3087.9.

(d) Any health care grievance appeal received outside the time limits pursuant to sections 3087.2 and 3087.4 may be accepted at the discretion of the HCCAB if it is determined that the health care grievance appeal should be subject to further review for reasons including, but not limited to:

(1) Good cause exists for untimely submission of the health care grievance appeal.

(2) Issues stated in the health care grievance appeal allege facts that warrant further inquiry.

(e) If determined to be necessary by HCCAB staff, an interview with the grievant may be conducted.

(f) Time limits for processing a health care grievance appeal commence on the day it is received by the HCCAB and shall be completed and returned to the grievant within 60 business days, unless processed as an expedited health care grievance appeal pursuant to subsection 3087.8(b).

(g) Headquarters' level health care grievance appeal responses shall be approved and signed pursuant to subsection 3087(x).

(h) The headquarters' level review constitutes the final disposition on a health care grievance and exhausts administrative remedies but does not preclude amending a response previously made at the headquarters' level.

(i) At its sole discretion, HCCAB may address new issues not previously submitted or included in the original health care grievance.

(j) A headquarters' level disposition addressing new issues exhausts administrative remedies.

(k) Amendments. HCCAB shall notify the HCGO and grievant when it is determined a health care grievance response requires amendment.

(1) The HCGO shall complete the amended response and return the health care grievance package to the grievant within 30 calendar days of notice issuance.

(2) The grievant shall have 30 calendar days plus five calendar days for mailing from the amended health care grievance response issue date to resubmit the entire original health care grievance package for a headquarters' level grievance appeal review.

(l) Headquarters' level directive. When it is determined intervention is appropriate, HCCAB may issue a headquarters' level directive to the institutional level reviewing authority; the headquarters' level directive shall be completed within 60 calendar days of the health care grievance appeal disposition. The 60 calendar day period may be extended by HCCAB after notification from the HCGO that there is a delay in the completion of a headquarters' level directive and the estimated completion date.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; Section 1013(a), California Code of Civil Procedure; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC ND~~ (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.

**New Section 3087.6 is adopted to read:**

**3087.6. Health Care Staff Complaints.**

(a) Health care grievances determined to be health care staff complaints after receiving a clinical triage shall be processed pursuant to Article 8.6, and not as a citizen's complaint.

(b) The HCGO shall present health care grievances alleging health care staff misconduct to the reviewing authority within five business days of receipt. The reviewing authority shall review the complaint and determine if:

(1) The allegation will be addressed as a health care grievance or as a health care staff complaint.

(2) The allegation will be processed as a health care staff complaint but does not warrant referral for an allegation inquiry or investigation, or the request for an investigation has been declined, in which case a confidential inquiry report shall be completed pursuant to subsection 3087.6(f).

(3) The allegation will be processed as a health care staff complaint and warrants referral to the applicable authority for an allegation inquiry or investigation.

(c) A health care staff complaint alleging excessive or inappropriate use of force shall be addressed pursuant to the procedures described in sections 3268 through 3268.2, Article 1.5, subchapter 4.

(d) A health care staff complaint alleging staff sexual misconduct shall be processed pursuant to the procedures described in section 3084.9, Article 8.

(e) If the health care staff complaint alleges health care or other issues unrelated to the allegation of health care staff misconduct, the HCGO shall notify the grievant that those unrelated issues shall be grieved separately and within 30 calendar days plus five calendar days for mailing from the date noted on the written notification.

(f) Confidential Inquiry Report. Health care staff with supervisory authority over the ~~accused~~ subject of the health care staff complaint shall:

(1) Conduct an inquiry to determine if health care staff behavior or activity violated a law, regulation, policy, or procedure, or was contrary to an ethical or professional standard, even if the grievant has paroled, discharged, or is deceased.

(2) Interview the following to reach a determination concerning the allegation(s):

(A) The grievant.

(B) All necessary witnesses.

(C) The subject of the health care staff complaint, unless no longer employed by CDCR or on a leave of absence.

~~1. The subject of the staff complaint shall be interviewed by a person trained to conduct administrative interviews.~~

12. The subject of the health care staff complaint will be given notice of the interview at least 24 hours prior to the interview. If the subject chooses to waive the 24-hour requirement, he or she must indicate this at the time they are given notice. If waived, the subject may be interviewed immediately.

(3) Prepare a confidential inquiry report and include evidence to support a determination of the findings concerning the allegation(s).

(4) The HCGO shall maintain the original and any redacted versions of the confidential inquiry report.

(A) The confidential inquiry report shall not be released to inmates under any circumstances.

(B) The subject of the health care staff complaint is entitled to know whether or not he or she violated policy and may view the confidential inquiry report in the HCGO under the following conditions:

1. With approval from the institutional litigation coordinator.
2. With redaction of other staffs' information including, but not limited to, identity, interview content, potential discipline, or inquiry findings.

(C) Requests for release of a confidential inquiry report relating to litigation shall be forwarded to the headquarters' health care Litigation Coordinator for review and approval to release.

(g) The institutional level response to a health care staff complaint shall inform the grievant of either:

- (1) The decision to conduct a confidential inquiry and the outcome.
- (2) The decision to refer the matter to the applicable investigating authority.

(h) Time limits for processing health care staff complaints shall be completed and returned to the grievant pursuant to subsections 3087.3(i) or 3087.5(f).

(i) Institutional level health care staff complaint responses shall be approved and signed pursuant to subsection 3087(x).

(j) The headquarters' level is for administrative review of the institutional level response of a health care staff complaint for which the grievant is dissatisfied with the institutional level disposition or if the grievant alleges headquarters' health care staff misconduct.

(k) Headquarters' level health care staff complaint responses shall be approved and signed pursuant to subsection 3087(x).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; Section 1013(a), California Code of Civil Procedure; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC ND (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.~~

**New Section 3087.7 is adopted to read:**

### **3087.7. Multiple Health Care Grievances.**

(a) Each identified multiple health care grievance shall be individually processed.

(1) The grievant who submitted the first accepted multiple health care grievance shall be identified. The identified grievant shall receive an interview pursuant to subsection 3087.3(f)(3). No other grievant will receive an interview unless health care grievance staff needs further clarification related to the issue.

(2) A response to each grievant shall be provided containing a statement to indicate that the health care grievance was processed as one of multiple health care grievances.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC ND (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.~~

**New Section 3087.8 is adopted to read:**

### **3087.8. Exceptions to Health Care Grievance Process Time Limits.**

(a) Exceptions to health care grievance process time limits pursuant to subsections 3087.3(i) and 3087.5(f) shall be permitted only when:

(1) Grievant, staff, or witnesses are not available prior to the expiration of the response time limits to provide information to prepare the health care grievance or health care grievance appeal response.

(2) The complexity of the decision, action, or policy requires additional research.

(3) Involvement of other departments, agencies, or jurisdictions is necessary.

(4) A state of emergency requires the postponement of nonessential administrative decisions and actions pursuant to subsection 3383(a), Article 1, subchapter 5.

(b) Expedited health care grievances and health care grievance appeals identified pursuant to subsections 3087.3(b)(2) or 3087.5(a)(2) shall be processed and returned to the grievant within five business days from the date of receipt.

(c) Headquarters' level directives shall specify the timeframe for completion for expedited health care grievance appeals.

(d) The HCGO shall notify the grievant and HCCAB if there is a delay in the completion of a headquarters' level directive and the estimated completion date.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC ND (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern~~

District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.

**New Section 3087.9 is adopted to read:**

**3087.9. Health Care Grievance and Health Care Grievance Appeal Rejection.**

(a) A health care grievance or health care grievance appeal may be rejected for reasons, which include, but are not limited to:

(1) The grievant did not submit the health care grievance or health care grievance appeal pursuant to Article 8.6.

(2) The health care grievance concerns an anticipated action or decision.

(3) The grievant submitted the health care grievance without a prior attempt to obtain health care services through approved processes. In this case, HCGO staff shall submit a request for health care services, if medically necessary, to the appropriate facility clinic on behalf of the grievant, which may be subject to a copayment pursuant to section 3354.2, Article 8, subchapter 4.

(4) An individual submitted a health care grievance or health care grievance appeal on behalf of another person.

(5) The grievant is temporarily outside health care jurisdiction for an indeterminate amount of time, including, but not limited to, out-to-court or at an offsite hospital, and not expected to return before the time limits for responding to the health care grievance or health care grievance appeal have expired.

(6) The health care grievance duplicates the grievant's previous health care grievance upon which a decision was rendered or is pending and the grievant has not provided any new information that would indicate additional review is warranted.

(7) A health care grievance is submitted as a group grievance by more than one grievant related to a policy, decision, action, condition, or omission affecting all members of the group.

(b) When a health care grievance or health care grievance appeal is rejected, a response to the grievant shall provide written instruction regarding further action the grievant must take to qualify the health care grievance or health care grievance appeal for processing and the timeframe necessary, as determined by the HCGO or HCCAB, to correct and resubmit the health care grievance or health care grievance appeal to the identified office.

(1) If the grievant submits a health care grievance or health care grievance appeal more than twice without complying with the written instruction, the health care grievance or health care grievance appeal will be adjudicated based on available information. Adjudication of a health care grievance or health care grievance appeal without complying with written instruction to correct submission does not preclude consideration for abuse pursuant to subsection 3087.11(a)(2).

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC ND~~ (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.

**New Section 3087.10 is adopted to read:**

**3087.10. Health Care Grievance and Health Care Grievance Appeal Withdrawal.**

(a) With the exception of health care grievances determined to be health care staff complaints, the grievant may withdraw a health care grievance or health care grievance appeal by requesting to have the processing stopped at any point up to receiving a signed response.

(b) The request to withdraw a health care grievance or health care grievance appeal shall identify the reason for the withdrawal in section EG of the CDCR 602 HC, and shall be signed and dated by the grievant. The grievant may also submit a written request to the reviewing authority, including the reason for withdrawal, grievant signature, and date.

(c) If there is agreed-upon relief noted in writing at the time of a withdrawal and the relief is not provided, the grievant may submit a new separate health care grievance on that issue within 30 calendar days of the failure to receive relief.

(d) The withdrawal of a health care grievance or health care grievance appeal does not preclude further administrative action regarding the issues being grieved.

(e) The decision to accept a request to withdraw a health care grievance or health care grievance appeal is at the discretion of the HCGO or HCCAB.

(1) The grievant shall be provided a response of acceptance of the request to withdraw a health care grievance or health care grievance appeal.

(2) If the request to withdraw a health care grievance or health care grievance appeal is not accepted, the processing of the health care grievance or health care grievance appeal shall continue and a response shall be issued, unless the grievant is paroled, deceased, or discharged pursuant to section 3087.12.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Americans With Disabilities Act, Public Law 101-336, July 26, 1990, 104 Stat. 328; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 *et seq.*, Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; ~~Memorandum of Understanding, *Armstrong v. Brown* (2002) USDC ND (No. C-94-2307-CW), U.S. District Court, Northern District of California; *Coleman v. Brown* (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and *Plata v. Brown* (No. C01-1351 TEH), U.S. District Court, Northern District of California.~~

**New Section 3087.11 is adopted to read:**

**3087.11. Abuse of the Health Care Grievance Process.**

(a) The following are abuse of the health care grievance process and may lead to health care grievance restriction:

(1) The submission of more than one health care grievance for initial review within a 14 calendar day period, unless it is accepted as an expedited grievance.

(2) The repeated filing of a health care grievance or health care grievance appeal that has been rejected and resubmitted without complying with rejection response instructions pursuant to subsection 3087.9(b).

(3) The grievant continues to submit health care grievances or health care grievance appeals contrary to section 3087.2.

(b) After the HCGO identifies health care grievance abuse and provides a written and verbal warning to the grievant, the headquarters' level reviewing authority shall have the discretion to authorize preparation and issuance of a notice restricting the grievant to one routine health care grievance every 30 calendar days for a period of up to one year. Any subsequent violation of the health care grievance restriction may result in an extension of the restriction for up to an additional one-year period upon approval by the headquarters' level reviewing authority.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 148.6(a), and 5054 and 5058.1, Penal Code; Memorandum of Understanding, Armstrong v. Brown (2002) USDC ND (No. C-94-2307-CW), U.S. District Court, Northern District of California; Coleman v. Brown (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and Plata v. Brown (No. C01-1351 TEH), U.S. District Court, Northern District of California.

**New Section 3087.12 is adopted to read:**

**3087.12. Changes in Health Care Jurisdiction.**

(a) If the grievant is temporarily outside health care jurisdiction for an indeterminate amount of time, including, but not limited to, out-to-court or at an offsite hospital, and not expected to return before the time limits for responding to the health care grievance or health care grievance appeal have expired, the health care grievance or health care grievance appeal may be rejected pursuant to subsection 3087.9(a). Upon return to health care jurisdiction, the grievant may resubmit the health care grievance or health care grievance appeal pursuant to subsection 3087.9(b).

(b) Paroled. If the grievant paroled before the time limits expire for responding to a health care grievance or health care grievance appeal, the grievant shall not receive a response unless the health care grievance or health care grievance appeal disputes the appropriateness of a charge (e.g., copayment).

(c) Deceased or Discharged. If the grievant is deceased or discharged before the time limits expire for responding to a health care grievance or health care grievance appeal, a response will not be prepared.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; Civil Rights of Institutionalized Persons Act; Title 42 U.S.C. Section 1997 et seq., Public Law 96-247, 94 Stat. 349; and Section 35.107, Title 28, Code of Federal Regulations; Memorandum of Understanding, Armstrong v. Brown (2002) USDC ND (No. C-94-2307-CW), U.S. District Court, Northern District of California; Coleman v. Brown (No. S90-0520 LKK JFM P) U.S. District Court, Eastern District of California; and Plata v. Brown (No. C01-1351 TEH), U.S. District Court, Northern District of California.

<b>STAFF USE ONLY</b>	Expedited? <input type="checkbox"/> Yes <input type="checkbox"/> No	Institution: _____	Tracking #: _____	
Staff Name and Title (Print) _____		Signature _____		Date _____

If you think you have a medical, mental health or dental emergency, notify staff immediately. If additional space is needed, use Section A of the CDCR 602 HC A Health Care Grievance Attachment. Only one CDCR 602 HC A will be accepted. You must submit this health care grievance to the Health Care Grievance Office for processing. Refer to California Code of Regulations (CCR), Title 15, Section 3087 for further guidance with the health care grievance process.

Do not exceed more than one row of text per line. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First, MI): _____	CDCR #: _____	Unit/Cell #: _____
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**SECTION A:** Explain the decision, action, condition, omission, policy, or regulation that has had a material adverse effect upon your health and or welfare for which you seek administrative remedy.

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**Note: Four text lines added to Section A.**

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*If you need more space, use Section A of the CDCR 602 HC A.*

Supporting Documents Attached. Refer to CCR 3087.2. List supporting documents attached: ☐ Yes ☐ No

<input type="checkbox"/> No, I have not attached any supporting documents. Reason: _____	Grievant Signature: _____
--	---------------------------

Date Submitted: \_\_\_\_\_

BY PLACING MY INITIALS IN THIS BOX, I REQUEST TO RECEIVE AN INTERVIEW AT THE INSTITUTIONAL LEVEL.

--

**SECTION B:** HEALTH CARE GRIEVANCE REVIEW INSTITUTIONAL LEVEL: Staff Use Only      Is a CDCR 602 HC A attached? ☐ Yes ☐ No

This grievance has been:

☐ Rejected (See attached letter for instruction): Date: \_\_\_\_\_ Date: \_\_\_\_\_

☐ Withdrawn (see section EG)

☐ Accepted      Assigned To: \_\_\_\_\_ Title: \_\_\_\_\_ Date Assigned: \_\_\_\_\_ Date Due: \_\_\_\_\_

Interview Conducted? ☐ Yes ☐ No      Date of Interview: \_\_\_\_\_ Interview Location: \_\_\_\_\_

Interviewer Name and Title (print): \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewing Authority Name and Title (print): \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Disposition: See attached letter ☐ Intervention ☐ No Further Intervention ☐ No Intervention

*If dissatisfied with Institutional Level Response, complete Section B.*

HCGO Use Only: Date closed and mailed/delivered to grievant: \_\_\_\_\_

- |  |   |  |
|--|---|--|
| <b>1. Disability Code:</b><br><input type="checkbox"/> TABE score ≤ 4.0<br><input type="checkbox"/> DPH <input type="checkbox"/> DPV <input type="checkbox"/> LD<br><input type="checkbox"/> DPS <input type="checkbox"/> DNH<br><input type="checkbox"/> DDP<br><input type="checkbox"/> Not Applicable | <b>2. Accommodation:</b><br><input type="checkbox"/> Additional time<br><input type="checkbox"/> Equipment <input type="checkbox"/> SLI<br><input type="checkbox"/> Louder <input type="checkbox"/> Slower<br><input type="checkbox"/> Basic <input type="checkbox"/> Transcribe<br><input type="checkbox"/> Other* | <b>3. Effective Communication:</b><br><input type="checkbox"/> Patient asked questions<br><input type="checkbox"/> Patient summed information<br><b>Please check one:</b><br><input type="checkbox"/> Not reached* <input type="checkbox"/> Reached<br>*See chrono/notes |
|--|---|--|

4. Comments: \_\_\_\_\_

**STAFF USE ONLY**



Tracking #:

**SECTION BC:** Health Care Grievance Appeal. If you are dissatisfied with the Institutional Level Grievance Response, explain the reason below (if more space is needed, use Section BC of the CDCR 602 HC A), and submit the entire health care grievance package by mail for Headquarters' (HQ) Level health care grievance appeal review. Mail to: Health Care Correspondence and Appeals Branch, P.O. Box 588500, Elk Grove, CA 95758.

Grievant Signature:

Date Submitted:

<b>SECTION D:</b>	<b>HEALTH CARE GRIEVANCE APPEAL REVIEW HQ LEVEL: Staff Use Only</b>	Is a CDCR 602 HC A attached? <input type="checkbox"/> Yes <input type="checkbox"/> No
This grievance has been:		
<input type="checkbox"/> Rejected (See attached letter for instruction): Date: _____ Date: _____		
<input type="checkbox"/> Withdrawn (see section EG)		
<input type="checkbox"/> Accepted		
Interview Conducted? <input type="checkbox"/> Yes <input type="checkbox"/> No Date of Interview: _____ Interview Location: _____		
Interviewer Name and Title (print): _____ Signature: _____ Date: _____		
Disposition: See attached letter <input type="checkbox"/> Intervention <input type="checkbox"/> No Further Intervention <input type="checkbox"/> No Intervention		
<i>This decision exhausts your administrative remedies.</i>		
HQ Use Only: Date closed and mailed/delivered to grievant: _____		

**SECTION EG:** Grievant requests to WITHDRAW health care grievance: I request that this health care grievance be withdrawn from further review. Reason:

Grievant Signature:

Date Submitted:

Staff Name and Title (Print):

Signature:

Date:

**STAFF USE ONLY**

Distribution: **Original** - Returned to grievant after completed; **Scanned Copy** - Health Care Appeals and Risk Tracking System 2.0 (Do not place in central file or health record)

**STAFF USE ONLY**

Institution:

Tracking #:

Attach this form to the CDCR 602 HC, Health Care Grievance, only if more space is needed. Only one CDCR 602 HC A may be used.  
Do not exceed more than one row of text per line. WRITE, PRINT, or TYPE CLEARLY in black or blue ink.

Name (Last, First, MI):

CDCR Number:

Unit/Cell Number:

**SECTION A:**

Continuation of CDCR 602 HC, Health Care Grievance, Section A only (Explain the decision, action, condition, omission, policy or regulation that has had a material adverse effect upon your health and or welfare for which you seek administrative remedy) :

**Note: Six text lines added to Section A.**

Grievant Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

**SECTION B:** Staff Use Only: Grievants do not write in this area. Grievance Interview Clarification. Document issue(s) clarified during interview.

**Note: The placement of Sections B and C has been reversed in order to allow additional writing space for grievants.**

**Additionally, Section B (Staff Use Only) has been reduced by 19 text lines.**

Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date : \_\_\_\_\_

**STAFF USE ONLY**

Tracking #:

**SECTION C:** Continuation of CDCR 602 HC, Health Care Grievance Appeal, Section C only (Dissatisfied with Health Care Grievance Response):

**Note: Eight text lines added to Section C.**

Grievant Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

**SECTION D:** Staff Use Only: Grievants do not write in this area. Grievance Appeal Interview Clarification. Document issue(s) clarified during interview (If necessary at HQ Level).

Name and Title: \_\_\_\_\_ Signature: \_\_\_\_\_ Date : \_\_\_\_\_

**STAFF USE ONLY**

**Distribution: Original** - Returned to grievant after completed, **Scanned Copy** - Health Care Appeals and Risk Tracking System 2.0 (Do not place in central file or health record)

Unauthorized collection, creation, use, disclosure, modification or destruction of personally identifiable information and/or protected health information may subject individuals to civil liability under applicable federal and state laws.